

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MORIANO MILLARE,

Plaintiff,

v.

G. STRATTON, et al.,

Defendants.

Case No.: 16cv1633-BAS (MDD)

**ORDER GRANTING IN PART  
PLAINTIFF'S MOTION  
REQUESTING ORDER  
REQUIRING DEFENSE COUNSEL  
PROVIDE FORWARDING  
ADDRESS**

**[ECF No. 34]**

On June 24, 2016, Plaintiff, a prisoner at Richard J. Donovan Correctional Facility (“RJD”) proceeding *pro se* and *in forma pauperis* (“IFP”), initiated this case by filing a civil rights complaint. (ECF No. 1). On January 4, 2017, Plaintiff filed a “Request for Order Directing Defense Counsel Provide Confidential Addresses to the U.S. Marshals Service” and requested an extension of time to serve four defendants. (ECF No. 19). On January 9, 2017, this Court denied Plaintiff’s motion. (ECF No. 20). On January 17, 2017, Plaintiff constructively filed a “Renewed Motion Requesting Order Directing Defense Counsel Provide Confidential Addresses to U.S. Marshals

1 for Service.” (ECF No. 26). There are seventeen defendants in this case and  
2 fourteen have filed a waiver of service and a motion to dismiss the case.  
3 (ECF Nos. 4-16, 22, 28). On February 28, 2017, the summons was returned  
4 unexecuted as to Defendant Brown. (ECF No. 29).

5 On March 7, 2017, Plaintiff signed a “Motion Requesting Order  
6 Requiring Defense Counsel Provide Forwarding Address,” which the Court  
7 accepted on discrepancy on March 15, 2017. (ECF Nos. 33, 34). Plaintiff now  
8 seeks to serve Defendants Brown and Limon and requests that the Court  
9 order defense counsel to provide their last known addresses to the U.S.  
10 Marshal Service, so that the U.S. Marshal can serve these defendants. (ECF  
11 No. 34 at 4). Plaintiff also requests an extension of time to serve these  
12 defendants. (*Id.*).

13 In support, Plaintiff explains that he sent a letter to the U.S. Marshal  
14 Service on February 10, 2017, inquiring about the status of service as to  
15 Defendants Limon and Brown. (*Id.* at 3, 6). Plaintiff has not received any  
16 information regarding the status of service as to Defendant Limon. (*Id.* at 3).  
17 Plaintiff’s summons was returned unexecuted as to Defendant Brown,  
18 indicating that Defendant Brown “retired from CDCR” and that there was  
19 “no forwarding address provided.” (*Id.* at 8).

20 **I. REQUEST TO PROVIDE ADDRESSES TO U.S. MARSHALS**

21 In cases involving a plaintiff proceeding IFP, a United States Marshal,  
22 upon order of the court, shall serve the summons and the complaint. Fed. R.  
23 Civ. P. 4(c)(3); 28 U.S.C. § 1915(d) (in IFP proceedings, “[t]he officers of the  
24 court shall issue and serve all process, and perform all duties in such cases.”).  
25 “An incarcerated pro se plaintiff proceeding in forma pauperis is entitled to  
26 rely on the U.S. Marshal for service of the summons and complaint and . . .  
27 should not be penalized by having his action dismissed for failure to effect

1 service where the U.S. Marshal or court clerk has failed to perform his  
 2 duties.” *Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting *Puett*  
 3 v. *Blandford*, 912 F.2d 270, 273 (9th Cir. 1990), *abrogated on other grounds*  
 4 by *Sandin v. Conner*, 515 U.S. 472 (1995)). “So long as the prisoner has  
 5 furnished the information necessary to identify the defendant, the marshal’s  
 6 failure to effect service is ‘automatically good cause . . .’” *Walker*, 14 F.3d at  
 7 1422 (quoting *Sellers v. United States*, 902 F.2d 598, 603 (7th Cir. 1990)).

8 Plaintiff’s motion is premature as to Defendant Limon because Plaintiff  
 9 has not received notification from the U.S. Marshals that the summons was  
 10 returned unexecuted as to Defendant Limon and that the U.S. Marshals’  
 11 failed to serve him. (ECF No. 34 at 3). Therefore, Plaintiff has not shown  
 12 good cause and Plaintiff’s motion is **DENIED WITHOUT PREJUDICE** as  
 13 to Defendant Limon.

14 Plaintiff has provided information “necessary to sufficiently identify”  
 15 Defendant Brown as a supervising correctional officer at RJD when the  
 16 alleged claims occurred. Plaintiff has provided this information to the United  
 17 States Marshal Service and already has attempted to effect service upon  
 18 Defendant Brown at RJD, his last known place of employment. The Court  
 19 finds that Plaintiff should not be penalized with dismissal as to Defendant  
 20 Brown simply because he no longer is employed at RJD and **GRANTS**  
 21 Plaintiff’s motion as to Defendant Brown.

22 The only reason the U.S. Marshal was unable to effect service upon  
 23 Defendant Brown is due to his retirement and the presumably confidential  
 24 nature of his forwarding address. Accordingly, as long as the privacy of  
 25 Defendant Brown’s forwarding address can be preserved, Plaintiff is entitled  
 26 to rely on the U.S. Marshal to effect service upon Defendant Brown on his  
 27 behalf. *See Puett*, 912 F.2d at 275. The Court hereby directs the Deputy

1 Attorney General assigned to this case to contact the Litigation Coordinator  
2 at RJD and/or the CDCR's Legal Affairs Division and to ask him or her to  
3 provide any forwarding address in his or her possession, or which is  
4 obtainable from the CDCR's personnel records for Defendant Brown, now  
5 retired, and to forward that address to the U.S. Marshal in a *confidential*  
6 *memorandum* indicating that the summons and Plaintiff's complaint is to be  
7 served upon Defendant Brown at that address. The U.S. Marshal Service  
8 must effectuate service using the new address without additional paperwork  
9 from Plaintiff.

10 **II. REQUEST TO EXTEND TIME TO SERVE DEFENDANTS**

11 Plaintiff also requests the Court to grant him an extension of time to  
12 serve Defendants Limon and Brown. (ECF No. 34 at 4). Pursuant to Federal  
13 Rule of Civil Procedure 4:

14 [i]f a defendant is not served within 90 days after the complaint is  
15 filed, the court – on motion or on its own after notice to the plaintiff  
– must dismiss the action without prejudice against that defendant  
16 or order that service be made within a specified time. But if the  
17 plaintiff shows good cause for the failure, the court must extend the  
time for service for an appropriate order.

18  
19 Fed. R. Civ. P. 4(m).

20 The Court previously granted Plaintiff an extension of time to serve  
21 Defendants Brown and Limon. (ECF No. 27 at 4). Plaintiff has informed the  
22 Court that since the Court's January 31, 2017, Order [ECF No. 27], he has  
23 received notice that the summons was returned unexecuted as to Defendant  
24 Brown, but not as to Defendant Limon. (ECF No. 34 at 3, 6). Accordingly,  
25 the Court finds good cause to **GRANT** Plaintiff's request and extend the time  
26 to serve Defendants Limon and Brown until **May 20, 2017**.

27 //

### III. CONCLUSION

Accordingly, the Court hereby:

1. **DENIES WITHOUT PREJUDICE** Plaintiff's request to provide the address of Defendant Limon to the U.S. Marshals;

2. **GRANTS** Plaintiff's request to provide the address of Defendant Brown to the U.S. Marshals and **ORDERS** the Deputy Attorney General assigned to this case to provide the forwarding address to the U.S. Marshal in a confidential memorandum stating that the summons and complaint are to be delivered to the address provided. The Attorney General's Office must provide the U.S. Marshal with any such information by **April 5, 2017**. If the Attorney General cannot locate the address for Defendant Brown, he must file a declaration by that same date stating such, and explain why the address could not be provided.

**Within 30 days** of receipt of any available address from the Attorney General, the Court **ORDERS** the U.S. Marshal to serve a copy of Plaintiff's complaint and summons on Defendant Brown. All costs of service shall be advanced by the United States pursuant to the Court's September 26, 2016 Order granting Plaintiff leave to proceed IFP and directing service pursuant to 28 U.S.C. § 1915(d) and Fed. R. Civ. P. 4(c)(2). (ECF No. 3); and

3. **GRANTS** Plaintiff an extension of time in which to file service upon Defendants Brown and Limon pursuant to Fed. R. Civ. P. 4(m) until **May 20, 2017**. *See Mann v. American Airlines*, 324 F.3d 1088, 1090 (9th Cir. 2003) (holding that the district court may, under the broad discretion granted by Fed. R. Civ. P. 4(m), extend time for service retroactively after the service period has expired).

4. **IT IS FURTHER ORDERED** that the Clerk provide the Attorney General's Office an "IFP Package" consisting of: (1) this Order; (2) a

1 copy of the Court's September 26, 2016 Order Granting IFP and Directing  
2 U.S. Marshal Service [ECF No. 3]; (3) a certified copy of his Complaint [ECF  
3 No. 1]; (4) an alias summons; and (5) a blank USMS Form 285 for purposes of  
4 re-attempting service upon Defendant Brown. Both the Attorney General's  
5 Office and the Office of the U.S. Marshal are **ORDERED** to keep the address  
6 provided strictly confidential. Thus, the address may not appear on any U.S.  
7 Marshal Form 285, may not be provided to Plaintiff, and may not be made  
8 part of the Court's record.

9 **IT IS SO ORDERED.**

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11 Dated: March 16, 2017



12  
13 Hon. Mitchell D. Dembin  
United States Magistrate Judge

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